

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.02.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

S.A.NO.557 OF 2006

AND

CMP.NO.10511 OF 2006

M/s Appa Rao Garden
Co-operative Housing Site
Society, represented by
Special Officer,
S.Narendran

...Appellant
(Plaintiff)

Vs.

P.S.Padmanabhan (died)
1.Mrs.Mythili Padmanabhan (died)
W/o Padmanabhan
2.Asha Krishna Kumar
3.Arvind

(Cause title accepted vide
order dated 17.4.2006
made in CMP.nO.5544/06)

..Respondents
(Defendent)

This Second Appeal has been filed against the judgment and decree in A.S.NO.385 of 2004 dated 12.9.2005 on the file of the Additional District and Sessions Judge, Fast Track Court No.IV, Chennai 600 001 confirming the decree and judgment in O.S.No.7731 of 1998 dated 25.6.2003 on the file of VI Assistant Judge, City Civil Court at Chennai.

For Appellant:Mr.R.G.Annamalai

For Respondents: Mr.R.Asaitambi

J U D G M E N T

Challenging the judgment of the Additional District and Sessions Judge, Fast Track Court No.IV, Chennai in a suit for specific performance, based on an agreement of sale whereby the

appellant/plaintiff's request was denied by both the Courts below, the above second appeal has been brought forth before this Court.

2. The short facts which lead to the filing of the suit are as follows:

During 1978, the father of the defendant late P.S.Padmanabhan agreed to sell his lands in T.S.No.14, Block No.11, which was under land ceiling proceedings situated in Puliur Village to and in favour of the plaintiff society authorising one Mr.P.S.Varadhan, Advocate to execute sale agreement and the sale deed on his behalf and to receive the consideration of Rs.14,400/- for an extent of 16,988 sq.ft. and by the agreement, the said Varadhan has received a sum of Rs.2,400/- towards advance and the balance consideration of Rs.12,000/- was paid on 17.3.1984 by way of cheque, but till date, the said agent did not execute the sale deed. The Society acquired lands simultaneously in T.S.NOs.1,12,13,14,15,16 and 17 with various extents from different owners in the same Puliur Village in Town Block No.11 and lay out was prepared and plots were also allotted to its 93 members. The society on obtaining sale deed from the owners of lands executed sale deeds in favour of 69 allottees. The allottees of plots in T.S.No.12 and 14 did not get sale deed, as the agents of the owners have not executed sale deed in favour of the plaintiff. These members have paid entire amount of the allotted price. The plots have been handed over to them before 1980 and they have put up construction. The 24 members who have not been given sale deed by the society, have been making representation for the past 20 years. For the land in T.S.No.14, the society has collected the amounts from its members and the entire sale consideration has also been paid. But the sale deed has not been executed by the owner P.S.Padmanabhan represented by the agent Mr.P.S.Varadhan. The plaintiff society sent notices dated 15.12.1997 and 27.1.1998 requesting for the execution of sale deed in favour of the plaintiff. Since there was no reply, there arose a necessity for filing of the suit for the relief as stated above.

3. The defendant contested the suit inter alia stating that the property absolutely belonged to the defendant. There was no society in the name of the plaintiff in the year 1978. There was no sale agreement between the plaintiff and the defendant. Hence, there is no question of any consideration having passed towards the agreement. The defendant nor his agent has received any sum except Rs.2,400/- as advance. The suit was barred by limitation. Even though the agreement is not accepted, the sale ought to have been completed within the period fixed by the law of limitation and not after 20 years and hence the suit must be dismissed.

4. The trial Court framed necessary issues, tried the suit and on trial, the suit was dismissed. Aggrieved plaintiff-society took it on appeal, which was also dismissed by the first appellate forum. Not satisfied, the plaintiff society has brought forth this second appeal before this Court.

5. At the time of admission, the following substantial questions of law were formulated:

1. Whether or not Ex.A1, Ex.A5, EX.A6 and EX.A18 prove that the payment of entire sale consideration as made under the suit agreement under Ex.A1?
2. Whether pre-suit notices Ex.A12 and A13 are valid or not?
3. Whether EX.A14 makes the suit maintainable as within time or not or whether the suit is barred by limitation in spite of EX.A14?
4. Whether the plaintiff is bound to pay court fee even after proving the payment of entire sale consideration under the suit agreement Ex.A1?

6. Advancing his arguments on behalf of the appellant, learned counsel would submit that an agreement was entered into between the parties in respect of the vacant land in Block No.11, T.S.No.1,12 to 17 in Puliur Village nearly 59 grounds for a total consideration of Rs.1,15,200 /- and a sum of Rs.40,400/- was paid as advance on 2.4.1979. The Society on obtaining sale deeds from the owners of lands executed sale deeds in favour of 69 allottees. The allottees of plots in T.S.No 12 and 14 did not get the sale deed, as the agents of the owners have not executed sale deed in favour of the plaintiff. These members have paid the entire amount of the allotted price. There were exchange of notices. It is true that agreement was entered in the year 1979, but there is a specific clause viz. Clause 4 of the sale agreement that the within three months from the date of approval of ownership of the land, the sale deed has to be executed. In the instant case, the title of the respondent/defendant was approved only in January, 1998 and hence the suit was filed after issuance of notice within the stipulated time and hence the trial Court's decision that the suit is barred by limitation is not warranted. Thus, the suit was filed in time. Added further learned counsel that in the instant case, out of the total consideration of Rs.14,400/-, though the defendant denied the sale agreement, he has admitted the receipt of Rs.2,400/- as advance and the balance of Rs.12,000/- was paid by way of cheque on 17.3.1984 under Ex.A7. In order to prove the same, all the ledgers of the society which were kept in the ordinary course of business cannot be produced. If the cheque was actually paid to the defendant after receipt of the entire amount, the defendant is duty bound to execute the sale deed. Added further, learned counsel the possession has been handed over to the persons, who have executed sale deeds and they were placed before MMDA for approval. The MMDA have also approved the properties of 69 persons who have taken their respective plots and the property in question have got to be taken because of the non-execution of the sale deed by the respondent herein. The first appellate Court also erroneously affirmed with the findings of the trial Court. Hence the judgments of the first appellate Court and the trial Court have got to be set aside and the relief of specific performance has got to be granted in favour of the appellant.

7. In support of his contention he relied upon the following decisions:

- (i) 2002(1) Supreme 583 (Shrimant Shamrao Suryavanshi & another Vs. Pralhad Bhairoba Suryavanshi (D) by Lrs. & Ors.)
- (ii) (2003) 3 M.L.J. 383 (Bakiyalakshmi & Ors. Vs. Alamelu (died) and others
- (iii) (2003) 3 M.L.J. 282 (Kaliappan (died) and another Vs. Venkatachalam & another)

8. Learned counsel for the respondent would submit that in the instant case, both the Courts below have rightly rejected the claim of the appellant society by denying the relief. The agreement was entered into in the year 1979, but the suit was filed after a period of 20 years in 1998. In so far as the consideration was concerned, it was Rs.14,400/-. The contention put forth by them was that an advance of Rs.2,400/- was paid at the time of agreement on 17.3.1984 by way of cheque, but there was no proof at all. Both the Courts have pointed out that even without making payment of balance consideration of Rs.12,200/-, it is a matter of surprise to note that the plaintiff came before this Court seeking for specific performance pointing out that the possession was handed over to the defendant. Though the defendant has retained the possession, part performance cannot arise in this case. Added further, learned counsel in the instant case, both the Courts have marshaled the evidence properly and dismissed the case rightly. Hence, the appeal has got to be dismissed.

9. This Court paid the anxious consideration over the submissions made and is of the considered opinion that the appeal does not merit whatsoever. Originally an agreement was entered on 2.4.1979 for an area of 59 grounds for a total consideration of Rs.1,15,200/- and a sum of Rs.14,400/- was paid as advance. The specific area was never mentioned as a separate area and there are exchange of notices between the parties. However, there was a notice by the defendant and it is well admitted that in T.S.14 an area of 6988 sq.ft. belonged to him and in respect of which Rs.14,400/- was paid. Under such circumstances, an agreement came to be entered into and in so far as the balance consideration of Rs.12,000/-, when it was denied specifically by the defendant in the course of written statement, a duty was cast upon the plaintiff to prove the same. Admittedly, there was no acknowledgment from the defendant for receipt of the said cheque. According to the plaintiff, the balance sale consideration was paid by way of cheque and if it is true, the plaintiff can very well file the bank statement with regard to the payment of Rs.12,000/- to the defendant. But the same was not filed before the Court. In such circumstances, this Court is of the considered opinion that they are weak piece of evidence. Apart from this, in the instant case, agreement was admittedly entered in 1979, but the suit was filed in the year 1999. The only contention put forth by the appellant side is that the suit was in time because there was a resolution passed by the plaintiff society in January 1998, approving the title of the defendants. It is submitted that within three months from the date of approval of the title of the owner, the sale deed must be executed, but the defendant

failed and therefore, the suit was within the time. It is a matter of surprise to note that no sale agreement was entered in 1979 and as per the plaintiff's case, though the whole consideration was paid even in 1984, it is not known as to why the plaintiff was waiting for 14 years. There is no explanation. But there was an explanation that there was a resolution passed in the year 1988 itself which was to escape from the point of limitation. It is brought to the notice of this Court that in respect of all other persons, sale deeds have been executed and it has been alleged that the owners are also in enjoyment. In so far as the defendant's case was concerned, even though a period of 14 years have elapsed, that too, after making payment of entire consideration doubt would cast on the plaintiff's case that no resolution has been passed in order to escape from the point of limitation. The contention of the learned counsel for the appellant that there was part performance and thus, the defendant was duty bound to execute the sale deed, cannot be countenanced. Nowhere in the plaint, it has been pleaded that neither the possession was handed over nor the part performance of the contract. On the contrary, Ex.A1 agreement would contain the recital stating that on the date of registration of the sale deed, the possession should be handed over. All would go to show that the plaintiff has not come forward before this Court with clean hands and that too in a case of specific performance, a discretionary relief. Both the Courts have dismissed the suit rightly and there is nothing to interfere either in the factual or legal position. Hence the appeal fails and the same is dismissed. No costs. Consequently, CMP.No.10511 of 2006 is also dismissed.

VJY

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

- 1.The Additional District and Sessions Judge, Fast Track Court
No.IV, Chennai 600 001
2. The VI Assistant Judge, City Civil Court at Chennai.
3. The Registrar, City Civil Court, Chennai.
4. The Record keeper, VR.Section,
High Court, Madras.

+2 ccs to Mr.R.G.Annamalai, Advocate Sr.No.7763.

PV(CO)

dcp/3.4.07